

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2054 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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RB JOSHI

Versus

A'BAD URBAN DEVLOPMENT AUTHORITY

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Appearance:

MR YN OZA for Petitioners  
MR HS BHURIA for MR RC JANI for Respondent No. 1  
MS MANISHA LAVKUMAR AGP for Respondent No. 2, 3

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/06/2000

ORAL JUDGEMENT

#. Heard learned counsel for the parties.

#. The petitioners in this petition prayed for the

following reliefs :-

- (a) Be pleased to admit this petition;
- (b) Be pleased to issue a writ of mandamus or any other appropriate writ, order or directions in the nature of mandamus directing the respondents to give the benefits of Group Insurance to the employees of respondent no.1 Urban Development Authority since the date of their appointment and to undergo all the formalities which the Management is required to undergo under the State Employees' Insurance Act, 1948 and also to prosecute the Officers concerned for non observance and breach of the provisions of the said Act;
- (c) Be pleased to issue writ of mandamus or any other appropriate writ, order or directions in the nature of mandamus directing the respondents to bring the rules and regulations in force immediately governing the service conditions of the employees thereby;
- (d) Be pleased to issue a writ of mandamus or any other appropriate writ, order or directions in the nature of mandamus directing the respondents to immediately frame the rules for pension for the employees of respondent No.1;
- (e) Be pleased to issue writ of mandamus or any other appropriate writ, order / or directions in the nature of mandamus directing the respondents to immediately send back the deputationists and to recruit or promote employees from the lower cadre;
- (f) Be pleased to issue a writ of mandamus or any other appropriate writ, order or directions in the nature of mandamus directing the respondents to give selection grade to the petitioners who have been stagnating;
- (g) Pending admission, hearing and final disposal of this petition be pleased to :

- i) direct the respondents to immediately grant benefit of group insurance under the Employees' State Insurance Scheme to the petitioners;
- ii) to direct the respondents to bring the rules and regulations in force immediately governing the service conditions of its employees;
- iii) to direct the respondents to immediately frame the rules for pension for its employees.
- iv) to restrain the respondents from appointing any person to any post on deputation and to direct not to extend the term of any person who is on deputation;
- h) to pass such other and further orders as may be deemed fit in the interest of justice.

#. So far as the second prayer is concerned I have my own reservation whether writ of mandamus can be issued by this court to give the direction to the respondents to frame the rules, regulations re. the service conditions of the employees under Article 309. Under proviso of the Act 309 of the Constitution, His Excellency the Governor of the State exercises the legislative powers and this court though I am not expressing any final opinion possibly cannot issue such a writ to legislate as what it is desired by the petitioners governing the service conditions. Otherwise also this grievance now no more survives in view of the statement made by the learned AGP and the copy has also been produced, that the rules governing the service conditions of the employees have already been framed. The prayer made in clause (d) of the para No.15 is also covered by prayer made in clause (c) of para 15. The prayer made in clause (b) of para 15 is concerned, it is suffice to say that on being put by the court the learned counsel for the petitioners is unable to state whether these benefits after framing of rules are given to the employees or not as on date. This petition is filed in the year 1987 and by passage of time possibility of that these grievances would have also been resolved cannot be over-ruled. Otherwise also if still some grievance survives re. the claim made in this

prayer, it is always open to the petitioners to approach to any of the respondents and they will take care of the same.

#. I find merits in the contention of the learned counsel for the petitioner that there may not be any justification in the action of the respondents to fill in all the posts of promotion or direct recruitment on deputation. Deputation is not a mode of recruitment. It is an exception to the rule of the recruitment or the constitutional provisions in the contingencies where immediately the need arises for the persons and suitable person is not available in the department or to make the recruitment by selection it may take some time. There may be another contingency where some expert person to meet out the special contingency arises may be taken on deputation but it cannot be a rule nor a source of recruitment. This prayer also after framing of the rules does not survive. The rules are framed and it is difficult to believe what to say to accept that the petitioners were knowing about the same. They have not brought this fact to the notice of the court.

#. In the service matter time and again and repeatedly this court has expected that it is the duty of the petitioner to disclose on affidavit or in writing or at least orally which of the grievance as made in the petition survives. This practice is not followed and as a result of which even in many of the cases where by passing of the time nothing substantial survives for but want of instructions etc. the advocates have to make the submissions and thereby the court's precious and valuable time is consumed. The recruitment rules will now take care of this grievance also. While granting interim relief this court has made it clear that all the appointments made on deputation shall be subject to the decision in this petition. If still some persons are continuing on deputation, petitioners are free to identify those persons and may make a representation for their repatriation to the parent department to the respondents and if such a representation is made the respondent concerned shall consider whether those employees are to be continued or forthwith to be repatriated to their parent department.

#. The prayer regarding the stagnation, it is suffice to say that the State Government has introduced the policy of giving of the higher pay scale on completion of 9-18-27 years services respectively to resolve the grievance of the employees of stagnation etc.

#. This Special Civil Application and rule stand  
disposed accordingly. No order as to costs.

(S.K.Keshote, J.)

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